

Title	Family Law: Notice for Ex Parte Hearings (adopt Cal. Rules of Court, rule 5.119; adopt form FL-307)
Summary	This proposal is to adopt a rule stating that family courts are subject to rule 379 of the California Rules of Court, which prescribes required notice for ex parte hearings. It would also provide form FL-307 for litigants to complete to show compliance with the rule.
Source	Family and Juvenile Law Advisory Committee
Staff	Bonnie Hough, 415-865-7668
Discussion	<p>Courts throughout the state have adopted a variety of rules regarding notice of ex parte hearings in family law matters. These local rules present particular challenge for attorneys who practice in more than one jurisdiction, as well as for self-represented litigants.</p> <p>Rule 379 of the California Rules of Court provides a standard rule regarding ex parte notice that is applicable in civil cases. Rule 379 provides that notice must generally be given to the opposing party by 10 a.m. the court day before the proposed ex parte hearing. Rule 981.1 provides that rules adopted by the Judicial Council preempt local court rules relating to, in pertinent part, ex parte applications. However, rule 981.1(b) specifically exempts cases under the Family Code.</p> <p>In a review of local rules, it appears that for family law cases, most courts have either adopted the rule 379 standard or have a 24-hour notice provision. There appears to be no strong policy reason for a different rule in family law cases than in general civil matters, and there is a strong public interest in having a consistent and similar rule.</p> <p>Thus, the Family and Juvenile Law Advisory Committee proposes adoption of rule 5.119 of the California Rules of Court to provide that cases under the Family Code, including domestic violence cases, are subject to the general rule that notice must be given by 10 a.m. the court date before the proposed ex parte hearing.</p> <p>Family Code section 241 provides that an ex parte order may not be granted without notice to the respondent unless it appears from the facts shown by the affidavit in support of the application for the order, or in the application for the order, that great or irreparable injury would result to the applicant before the matter can be heard on notice. That code section contains an exemption for cases under Family Code section 6300, which pertains to protective orders and other domestic</p>

violence prevention orders. However, under Family Code section 241, it is clear that notice may be waived for conditions other than those set out in Family Code section 6300.

Proposed form FL-307, *Declaration of Notice on Emergency Application for Orders*, has been designed to help litigants comply with the requirements of rule 5.119 and to provide simplified access to attorneys practicing in more than one county.

Copy of rule 379 is attached at pages 3–6, and the text of the new rule and form is attached at pages 7–8..

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Attachments

## For Reference Only

### 1   **Rule 379. Ex parte applications and orders**

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3       **(a) [Ex parte application]** An ex parte application for an order must be  
4       accompanied by an affidavit or a declaration showing:

5  
6           (1) that, within the applicable time period under (b), the applicant informed the  
7           opposing party when and where the application would be made; or

8  
9           (2) that the applicant in good faith attempted to inform the opposing party but  
10          was unable to do so, specifying the efforts made to inform the opposing  
11          party; or

12  
13          (3) that, for reasons specified, the applicant should not be required to inform  
14          the opposing party.

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16       (Subd (a) amended effective January 1, 2003; previously amended effective July 1,  
17       1997.)

18  
19       **(b) [Time of notice; time of notice in unlawful detainer proceedings]** A party  
20       seeking an ex parte order must notify all parties no later than 10:00 a.m. the  
21       court day before the ex parte appearance, absent a showing of exceptional  
22       circumstances that justify a shorter time for notice. A party seeking an ex parte  
23       order in an unlawful detainer proceeding may provide shorter notice provided  
24       that the notice given is reasonable.

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26       (Subd (b) amended effective January 1, 2003; adopted effective July 1, 1997;  
27       previously amended effective July 1, 1999, and July 1, 2000.)

28  
29       **(c) [Filing and presentation of the ex parte application]** The clerk must not  
30       reject an ex parte application for filing and must promptly present the  
31       application to the appropriate judicial officer for consideration,  
32       notwithstanding the failure of an applicant to comply with the notification  
33       requirements in (b).

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35       (Subd (c) adopted effective January 1, 2003.)

36  
37       **(d) [Contents of application]**

38  
39           (1) An ex parte application for an order must state the name, address, and  
40           telephone number of any attorney known to the applicant to be an  
41           attorney for any party or, if no such attorney is known, the name, address,  
42           and telephone number of such party if known to the applicant.

## For Reference Only

- 1 (2) If an ex parte application for an order has been made to the court and has  
2 been refused in whole or in part, any subsequent application of the same  
3 character or for the same relief, although made upon an alleged different  
4 state of facts, must include a full disclosure of any previous applications  
5 and the court's actions.  
6

7 (Subd (d) amended and relettered effective January 1, 2003; adopted as part of subd  
8 (b) effective January 1, 1984.)  
9

### 10 (e) [Contents of notice and declaration regarding notice]

11

- 12 (1) When notice of an ex parte application is given, the person giving notice  
13 must state with specificity the nature of the relief to be requested and the  
14 date, time, and place for the presentation of the application, and must  
15 attempt to determine whether the opposing party will appear to oppose the  
16 application.  
17
- 18 (2) Every ex parte application must be accompanied by a declaration  
19 regarding notice that states:  
20
- 21 (A) the notice given, including the date, time, manner, and name of the  
22 party informed, the relief sought, any response, and whether  
23 opposition is expected; or  
24
- 25 (B) why notice should not be required.  
26
- 27 (3) If notice was provided later than 10:00 a.m. the court day before the ex  
28 parte appearance, the declaration regarding notice must explain:  
29
- 30 (A) the exceptional circumstances that justify the shorter notice, or  
31
- 32 (B) in unlawful detainer proceedings, why the notice given is  
33 reasonable.  
34

35 (Subd (e) amended and relettered effective January 1, 2003; adopted as subd (c)  
36 effective July 1, 1997.)  
37

### 38 (f) [Required documents] An ex parte application must be in writing and include 39 all of the following: 40

- 41 (1) An application containing the case caption and stating the relief  
42 requested;

## For Reference Only

1 (2) A declaration in support of the application making the factual showing  
2 required under (g);

3  
4 (3) A competent declaration based on personal knowledge of the notice given  
5 under (e);

6  
7 (4) A memorandum of points and authorities; and

8  
9 (5) A proposed order.

10  
11 (Subd (f) amended and relettered effective January 1, 2003; adopted as subd (d)  
12 effective July 1, 1997.)

13  
14 (g) **[Affirmative factual showing required]** An applicant must make an  
15 affirmative factual showing in a declaration containing competent testimony  
16 based on personal knowledge of irreparable harm, immediate danger, or any  
17 other statutory basis for granting relief ex parte.

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19 (Subd (g) amended and relettered effective January 1, 2003; adopted as subd (e)  
20 effective July 1, 1997.)

21  
22 (h) **[Service of papers]** Parties appearing at the ex parte hearing must serve the ex  
23 parte application or any written opposition on all other appearing parties at the  
24 first reasonable opportunity. Absent exceptional circumstances, no hearing  
25 may be conducted unless such service has been made.

26  
27 (Subd (h) amended and relettered effective January 1, 2003; adopted as subd (f)  
28 effective July 1, 1997.)

29  
30 (i) **[Personal appearance requirements]** An ex parte application will be  
31 considered without a personal appearance of the applicant in the following  
32 cases only:

33  
34 (1) Applications to file a memorandum of points and authorities in excess of  
35 the applicable page limit;

36  
37 (2) Setting of hearing dates on alternative writs and orders to show cause; and

38  
39 (3) Stipulations by the parties or other orders of the court.

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41 (Subd (i) amended and relettered effective January 1, 2003; adopted as subd (g)  
42 effective July 1, 1997.)

## For Reference Only

1 Rule 379 amended effective January 1, 2003; adopted effective January 1, 1984;  
2 previously amended effective July 1, 1997, July 1, 1999, and July 1, 2000.

### 3 4 Drafter's Notes

5 1984-Based on former § 15 of the Standards of Judicial Administration (Appendix,  
6 Division I) that was repealed January 1, 1984.

7 1999-The amendment changes the requirement that a party seeking an ex parte order  
8 must "give a minimum of 24 hours notice" to a requirement that the party must  
9 "notify all parties no later than 10:00 a.m. the court day before" the ex parte  
10 appearance.

11 July 2000-See note following rule 201.  
12

**Rule 5.119 of the California Rules of Court would be adopted, effective January 1, 2004 to read:**

**Rule 5.119. Ex parte applications**

**(a) [Ex parte application]** An ex parte application under the Family Code must follow the requirements of rule 379 of the California Rule of Court, except that no memorandum of points and authorities is required for a motion brought ex parte unless ordered by the judge on a case-by-case basis.

**(b) Declaration regarding notice]** The required declaration regarding notice, or reason for lack of notice, given to the opposing party must be provided on the Judicial Council form *Declaration of Notice on Emergency Application for Orders (FL-307)*.

**(c) [Personal appearance requirements]** An ex parte application will be considered without a personal appearance by the applicant in the following cases only:

- (1) Applications under division 10 (commencing with section 6200) of the Family Code;
- (2) Applications under section 2045 of the Family Code;
- (3) Applications under section 4620 of the Family Code; or
- (4) Applications under section 7710 of the Family Code.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):   TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY   <h1 style="text-align: center;">DRAFT 2</h1> <h1 style="text-align: center;">3/10/03</h1>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARENT: _____		
<b>DECLARATION OF NOTICE ON EMERGENCY APPLICATION FOR ORDERS</b>		CASE NUMBER: _____  DEPT: _____

1. I, (name): \_\_\_\_\_ am the ☐ attorney for ☐ petitioner/plaintiff ☐ respondent/defendant  
☐ other (specify): \_\_\_\_\_ in this case.
2. a. ☐ I told the opposing party the date, time, and place of this emergency hearing and what I would be asking the court to order. This notice was given by:
- (1) ☐ telephone on (date): \_\_\_\_\_ telephone no.: \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
- (2) ☐ personal service on (date): \_\_\_\_\_ at (location): \_\_\_\_\_, California; at \_\_\_\_\_ a.m./p.m.
- (3) ☐ fax on (date): \_\_\_\_\_ fax no.: \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
- (4) ☐ e-mail on (date): \_\_\_\_\_ to e-mail address: \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
- b. (1) ☐ I gave this notice by 10 a.m. the court day before this emergency hearing.
- (2) ☐ I gave this notice after 10 a.m. the court day before this emergency hearing because of the following exceptional circumstances (specify): \_\_\_\_\_
- c. The opposing party responded to my notice in the following manner: \_\_\_\_\_
- d. ☐ I believe the opposing party will come to court to oppose this request.
3. ☐ I used my best efforts to tell the opposing party when and where this hearing would take place but was unable to do so. The efforts I made to inform the other person were (specify): \_\_\_\_\_
4. ☐ I did not try to tell the opposing party about this emergency request for orders because (check all that apply):
- a. ☐ This is an application for Domestic Violence Prevention Act (DVPA) restraining orders.
- b. ☐ I, or my client, would suffer great or irreparable injury before the other party could be heard in opposition.
- c. ☐ Other (specify): \_\_\_\_\_
- Please explain your answer to a-c. \_\_\_\_\_
5. ☐ The parties to this case are involved in another family, probate, juvenile or criminal court case.  
 That case number is: \_\_\_\_\_
6. ☐ I have asked for these orders before.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_



(TYPE OR PRINT NAME)

(SIGNATURE)